

**TOWN OF FAIRFAX
STAFF REPORT
Department of Planning & Building Services**

TO: Planning Commission

FROM: Jim Moore, Director of Planning & Building Services 

DATE: September 25, 2014

PROJECT: Adoption of Resolution recommending Fairfax Town Council adopt Ordinance No. 782, Prohibiting Approvals of Formula Businesses and Formula Restaurants within the Highway Commercial (CH) Zoning District and Updating the Language for same in the Central Commercial (CC) Zoning District.

CEQA STATUS: CEQA Exempt, 14 C.C.R. § 15061(b) (3).

BACKGROUND

On August 6, 2014, the Town Council adopted Urgency Interim Ordinance No. 781 imposing a 45-day moratorium on the approval of any subdivisions, use permits, variances, building permits, sign permits, or any other applicable entitlement for use which is required in order to comply with the Town's zoning ordinance or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities for use as a "formula business" or "formula restaurant" located within the Highway Commercial (CH) zoning district.

The moratorium adopted by the Council on August 6, 2104 was initially effective for 45 days. On September 3, 2014 the Council extended the moratorium. The moratorium will now expire upon the earlier of either (a) upon the effective date of the permanent zoning regulations governing formula-based businesses and restaurants in the CH zone, or (b) automatically ten months and fifteen days from passage of the extension. The moratorium is an interim measure meant to dovetail with the proposed zoning ordinance to amend the CH zone to create controls for formula based businesses. Unlike the CC zoning district, the CH currently has no such formula business regulations.

DISCUSSION

Upon reviewing the existing controls for formula based businesses in the CC zoning district, the Town Attorney advised that that language should be updated and be the same as the language/controls being recommended for the CH zoning district.

Therefore, Ordinance No. 782 will create new language/controls for formula business regulations within the CH zoning district and revise the existing language/controls currently contained in the CC zoning district.

RECOMMENDATION

- 1) Open/close public hearing

- 2) Adopt Resolution recommending Fairfax Town Council adopt Ordinance No. 782, an Ordinance of the Town Council of the Town of Fairfax Prohibiting Approvals of Formula Businesses and Formula Restaurants within the Highway Commercial (CH) and Central Commercial (CC) Zoning Districts.

ATTACHMENTS

Resolution
Ordinance No. 782

RESOLUTION NO. 14-13

A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION RECOMMENDING THE FAIRFAX TOWN COUNCIL ADOPT AN ORDINANCE AMENDING CHAPTER 17.096 (“CH HIGHWAY COMMERCIAL ZONE”) AND ARTICLE II OF CHAPTER 17.100 (“CC CENTRAL COMMERCIAL ZONE”) OF THE FAIRFAX TOWN CODE RELATING TO FORMULA BUSINESSES AND RESTAURANTS

WHEREAS, the Fairfax Town Code currently includes provisions relating to the approval of formula businesses and formula restaurants in the Central Commercial (‘CC’) zoning district (the ‘Formula Business Ordinance’); and

WHEREAS, the Town desires to amend the Town Code to revise the Formula Business Ordinance in the CC zoning district and include similar provisions in the Highway Commercial (‘CH’) zoning district; and

WHEREAS, the Planning Commission has considered those certain proposed amendments to and extensions of Fairfax’s Formula Business Ordinance as set forth in proposed Ordinance No. 782, a true and correct copy of which is attached hereto as Exhibit A; and

WHEREAS, the Planning Commission considered proposed Ordinance No. 782 at a duly noticed public hearing on September 25th, 2014, at which time it received oral and documentary evidence related to the proposed ordinance; and

WHEREAS, the Planning Commission finds that the proposed Ordinance is required for the public health, safety, and general welfare, and that such ordinance is consistent with the general objectives, policies, and programs of the General Plan.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. The proposed Ordinance No. 782 has been assessed in accordance with the California Environmental Quality Act (“CEQA,” codified at Public Resources Code § 21000, et seq., and as further governed by the CEQA Guidelines, 14 C.C.R. § 15000, et seq.). The proposed Ordinance does not authorize construction and, in fact, imposes greater restrictions on certain development within the CH and CC zoning districts in order to protect the public health, safety and general welfare. Therefore, the Planning Commission finds that it can be seen with certainty that the proposed Ordinance does not have the possibility to have a significant effect on the environment, and is therefore exempt from the environmental review requirements of CEQA per 14 C.C.R. § 15061(b)(3).

Section 2. The Planning Commission hereby finds that the proposed Ordinance is consistent with many General Plan policies, including, but not limited to Land Use Policy LU-7.1.2, insomuch as it will help ensure that new and/or renewed development in the Town Center Area shall preserve and enhance the mix of land uses, architectural styles and ornamentation,

materials, colors and texture; as well as Town Center Policy TC-3.2.8, given that it will further the Town's policy of promoting locally-owned businesses.

Section 3. The Planning Commission thus hereby recommends that the Town Council adopt proposed Ordinance No.782, substantially as set forth in Exhibit A.

The foregoing resolution was duly introduced and adopted on the 25th day of September, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Brannon Ketcham, Chairperson

James M. Moore, Secretary
Director of Planning and Building Services

35 opportunities that are tailored to the distinctive character and local interests of Fairfax residents
36 and visitors and are not necessarily reproducible or found in the context of formula businesses
37 and/or restaurants; and

38 **WHEREAS**, the Council further believes that Fairfax enjoys as many visitors as it does in large
39 part due to the unique nature of its retailers and restauranteurs, many of whom own their own
40 businesses; and

41 **WHEREAS**, if not monitored and regulated, the increase of formula retail businesses and
42 restaurants in either the Town Center Planning Area could hamper the Town's goal of a diverse
43 local economy, as well as the retention of its unique village identity; and

44 **WHEREAS**, Article II of Chapter 17.100 of the Town Code currently regulates the approval of
45 formula businesses and formula restaurant uses in the CC zoning district (the "Formula Business
46 Ordinance"); and

47 **WHEREAS**, the CH zoning district currently has no similar such regulations; and

48 **WHEREAS**, the Formula Business Ordinance as set forth in the CC zoning regulations has not
49 been updated since 2002, some ten years prior to the 2012 update of the General Plan.

50 **NOW, THEREFORE**, the Town Council of the Town of Fairfax does ordain as follows:

51 **SECTION 1:** The following title shall be inserted into Chapter 17.096 of the Town Code of the
52 Town of Fairfax, so that it precedes Section 17.096.010:

53 "ARTICLE I: GENERALLY"

54 **SECTION 2:** The following shall be inserted after the end of Section 17.096.130 ('Traffic
55 impact permit'):

56 "ARTICLE II: FORMULA BUSINESSES AND RESTAURANTS IN CH ZONES

57 § 17.096.150 PURPOSE.

58 The vitality and character of the Town's economy is dependent upon its small-town, village
59 character and pedestrian scale. It is the purpose of this article to regulate formula businesses and
60 formula restaurants in the CH zone to ensure that the CH zone serves local demand for goods
61 and services, provides a diverse mix of businesses that are compatible with the needs of area
62 residents, preserves opportunities for owner-operator businesses, maintains the Town's unique
63 village character, and promotes the pedestrian-orientation of the Town Center Planning Area, to
64 which the CH zoning district belongs.

65 § 17.096.160 DEFINITIONS.

66 For the purpose of this article, the following definitions shall apply unless the context clearly
67 indicates or requires a different meaning.

68 FORMULA BUSINESS. Any business that is required by a corporate headquarters or
69 franchise or other arrangement to maintain any of the following: standardized services, decor,
70 uniforms, architecture, signs or other similar features. This shall include but not be limited to any
71 retail sales, service, visitor accommodation, wholesale or industrial operations that was not in
72 business within the Fairfax CH zone prior to April 1, 2000.

73 FORMULA RESTAURANT. Any restaurant devoted to the preparation and offering of food
74 and beverage for sale to the public for consumption either on or off premises and which is
75 required by contractual or other arrangement to offer any of the following: standardized menus,
76 ingredients, food preparation, decor, uniforms, architecture or similar standardized features that
77 was not in business within the Fairfax CH zone prior to April 1, 2000.

78 § 17.096.170 CONDITIONAL USE OF FORMULA BUSINESSES AND RESTAURANTS IN
79 THE CC ZONE.

80 A formula business or formula restaurant may only be established on a site after obtaining a
81 conditional use permit for the operation of that use on such site, subject to the limitations of this
82 Article. In addition to the findings required by Chapter 17.032 as prerequisite to the issuance of
83 a conditional use permit, no conditional use permit shall be issued for a proposed formula
84 business or restaurant unless the Planning Commission can make all of the following findings:

85 (A) The proposed formula business or restaurant will promote diversity and variety to assure
86 a balanced mix of commercial uses available to serve both resident and visitor
87 populations.

88 (B) The proposed formula business or restaurant, together with its design and improvements,
89 will be consistent with the unique and historic village-like character of Fairfax, and
90 preserve the unique visual appearance and shopping and dining experience of Fairfax for
91 its residents and visitors.

92 (C) The proposed formula business or restaurant will provide services or products which
93 complement existing business in the CH zone, given the existence of and proximity to the
94 same or similar businesses in the CH zone.

95 (D) The proposed formula business or restaurant will be consistent with the pedestrian
96 orientation of the Town Center Planning Area.

97 (E) The proposed formula business or restaurant will help residents avoid the need to drive
98 out of town for their shopping needs.

99 (F) The proposed formula business or restaurant will be consistent with all applicable
100 General Plan goals, objectives, policies, and programs.”

101 **SECTION 3:** Article II of Chapter 17.100 of the Town Code of the Town of Fairfax is hereby
102 amended to read as follows:

103 “ARTICLE II: FORMULA BUSINESSES AND RESTAURANTS IN CC ZONES

104 § 17.100.150 PURPOSE.

105 The vitality and character of the Town’s economy is dependent upon its small-town, village
106 character and pedestrian scale. It is the purpose of this article to regulate formula businesses and
107 formula restaurants in the CC zone to ensure that the CC zone serves local demand for goods and
108 services, provides a diverse mix of businesses that are compatible with the needs of area
109 residents, preserves opportunities for owner-operator businesses, maintains the Town’s unique
110 village character, and promotes the pedestrian-orientation of the Town Center Planning Area, to
111 which the CC zoning district belongs.

112 § 17.100.160 DEFINITIONS.

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114 indicates or requires a different meaning.

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116 franchise or other arrangement to maintain any of the following: standardized services, decor,
117 uniforms, architecture, signs or other similar features. This shall include but not be limited to any
118 retail sales, service, visitor accommodation, wholesale or industrial operations that was not in
119 business within the Fairfax CC zone prior to April 1, 2000.

120 FORMULA RESTAURANT. Any restaurant devoted to the preparation and offering of food
121 and beverage for sale to the public for consumption either on or off premises and which is
122 required by contractual or other arrangement to offer any of the following: standardized menus,
123 ingredients, food preparation, decor, uniforms, architecture or similar standardized features that
124 was not in business within the Fairfax CC zone prior to April 1, 2000.

125 § 17.100.170 CONDITIONAL USE OF FORMULA BUSINESSES AND RESTAURANTS IN
126 THE CC ZONE.

127 A formula business or formula restaurant may only be established on a site after obtaining a
128 conditional use permit for the operation of that use on such site, subject to the limitations of this
129 Article. In addition to the findings required by Chapter 17.032 as prerequisite to the issuance of
130 a conditional use permit, no conditional use permit shall be issued for a proposed formula
131 business or restaurant unless the Planning Commission can make all of the following findings:

- 132 (A) The proposed formula business or restaurant will promote diversity and variety to assure
133 a balanced mix of commercial uses available to serve both resident and visitor
134 populations.
- 135 (B) The proposed formula business or restaurant, together with its design and improvements,
136 will be consistent with the unique and historic village-like character of Fairfax, and
137 preserve the unique visual appearance and shopping and dining experience of Fairfax for
138 its residents and visitors.
- 139 (C) The proposed formula business or restaurant will provide services or products which
140 complement existing business in the CC zone, given the existence of and proximity to the
141 same or similar businesses in the CC zone.
- 142 (D) The proposed formula business or restaurant will be consistent with the pedestrian
143 orientation of the Town Center Planning Area.
- 144 (E) The proposed formula business or restaurant will help residents avoid the need to drive
145 out of town for their shopping needs.
- 146 (F) The proposed formula business or restaurant will be consistent with all applicable
147 General Plan goals, objectives, policies, and programs.

148 **SECTION 4:** CEQA. The Town of Fairfax finds that there is no possibility that the
149 adoption and implementation of this Ordinance will have significant effects on the environment,
150 and therefore, this Ordinance is exempt from the California Environmental Quality Act (CEQA)
151 pursuant to 14 California Code of Regulations, Section 15061(b)(3).

152 **SECTION 5:** Severability. If any section, subsection, sentence, clause, or phrase of this
153 Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of
154 competent jurisdiction, such decision shall not affect the validity of the remaining portions of the
155 Ordinance. The Town Council hereby declares that it would have passed this Ordinance and
156 each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone
157 or more sections, subsections, sentences, clauses, or phrases be declared invalid or
158 unconstitutional.

159 **SECTION 6:** This Ordinance shall be effective 30 days following its adoption by the
160 Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption,
161 be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall
162 Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club
163 building.

164 The foregoing Ordinance was introduced at a regular meeting of the Town Council on the ____
165 day of _____, 2014, and duly adopted at the next regular meeting of the Town
166 Council on the ____ day of _____, 2014, by the following vote, to wit:

167 AYES:
168 NOES:
169 ABSENT:

170

171

172

173 Attest:

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175

176

177

Michele Gardner, Town Clerk

David Weinsoff, Mayor